IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
-.-

FAO 7005 of 2018 (O&M)
Date of decision: 08.02.2019

National Insurance Company Limited ....*Appellant*

versus

Malkiat Kaur and others ......*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. Vinod Gupta, Advocate
for the appellant
-.-

Rekha Mittal, J. (Oral)

The present appeal directs challenge against order dated 20.07.2008 passed by the Commissioner under the Employees' Compensation Act, Amritsar whereby compensation has been awarded on account of death of Avtar Singh in occurrence that took place on 13.03.2015 when Avtar Singh was returning to Punjab (Amritsar) from Mumbai in Truck bearing No. PB02-BV 9978, owned by Tilak Raj son of Chailo Ram, respondent No. 1 therein.

Counsel for the appellant has assailed the award primarily on two counts. It is argued that driving licence Ex R2 purportedly possessed by Avtar Singh was issued by Licensing Authority, Nagaland. It is further submitted that, in view of communication issued by the Government of Nagaland in the year 2014, all driving licences issued in the booklet form shall be deemed to be cancelled and treated as set aside unless prepared in smart card form. According to counsel, as driving licence Ex. R2 is not in smart card form, the insurance company cannot be fastened with liability to pay compensation or at least should be allowed right of recovery against the insured after payment of compensation to the claimants. The second submission made by counsel is that the Tribunal has applied factor of 209.92 by considering the deceased to be 29 years old. It is argued that as per the post mortem report, the deceased was 45 years old at the time of death, therefore, factor is liable to be modified accordingly.

I have heard counsel for the appellant and perused the paper book particularly the order impugned.

Indisputably, the insurance company did not examine a witness of the concerned Licensing Authority to prove that licence was not issued in favour of Avtar Singh. The mere fact that Government of Nagaland has issued a communication that unless the licence is issued in smart card form, the same shall be deemed to be cancelled would not enure to benefit of the insurance company even if the original licence had been validly issued by the authority concerned. In the given scenario, contention raised by the insurance company in regard to driving licence is not tenable and accordingly rejected.

This brings the Court to factor applied by the Tribunal. The application for compensation has been filed by the widow and two minor daughters of deceased. Malkiat Kaur, widow of the deceased appeared in the witness box but nothing was put to her either with regard to her age or age of the deceased or children of Malkiat Kaur. Driving licence available on record mentions date of birth of Avtar Singh, on the basis whereof, the Tribunal applied factor of 209.92 by treating the deceased to be 29 years old.

As the insurance company has failed to prove that driving licence is not valid, contents thereof can be taken into consideration for assessing age of the deceased in preference to age recorded in the post mortem report. In this view of the matter, I do not find an error much less illegality in decision of the Commissioner to apply factor on the basis of date of birth of the deceased recorded in the driving licence.

No other point has been raised.

In view of what has been discussed herein-before, finding no merit, the appeal fails and is accordingly dismissed *in limine.*

(Rekha Mittal)
Judge

08.02.2019
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